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DAN E. ARNETT
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FLORENCE P. BELSER
GENERAL COUNSEL

September 7, 2005

VIA HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

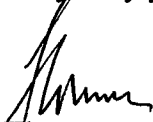
Re: Application of Midlands Utility, Inc. for an approval of New Schedule of Rates and Charges for Sewage Service provided to its customers in Richland, Lexington, Fairfield and Orangeburg Counties.
PSC Docket No.: 2004-297-S

Dear Charles:

Enclosed please find the original and fifteen (15) copies of the Office of Regulatory Staff's Response to Petition for Declaratory Order in the above-referenced docket

Should any additional information be required, please let me know.

Very truly yours,


Florence P. Belser
General Counsel

FPB/rng

Enclosures

cc: Charles Cook, Esquire
Scott Elliott, Esquire

RECEIVED
2005 SEP -7 PM 2:23
SC PUBLIC SERVICE
COMMISSION

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

DOCKET NO. 2004-297-S

IN RE:

Application of MIDLANDS)
UTILITIES, INC. for an Approval)
Of New Schedule of Rates and)
Charges For Sewage Service)
Provided to its Customers in)
Richland, Lexington, Fairfield and)
Orangeburg Counties.)
_____)

CERTIFICATE OF SERVICE

SC PUBLIC SERVICE
COMMISSION

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RECEIVED

This is to certify that I, Rena Grant, an employee with the Office of Regulatory Staff, have this date served ten (10) copies of **OFFICE OF REGULATORY STAFF'S RESPONSE TO PETITION FOR DECLARATORY ORDER** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

Charles Cook, Esquire
Scott Elliott, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205



Rena Grant

September 7, 2005
Columbia, South Carolina

C. DUKES SCOTT
EXECUTIVE DIRECTOR

1111 Main Street, Suite 300
Columbia, SC 29201



DAN E. ARNETT
CHIEF OF STAFF

Main Line: 803-737-0300
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FLORENCE P. BELSER
GENERAL COUNSEL

September 7, 2005

VIA U.S. MAIL

Charles Cook, Esquire
Elliott & Elliott, P.A.
721 Olive Street
Columbia, South Carolina 29205

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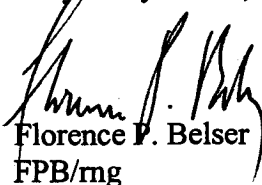
Re: Application of Midlands Utility, Inc. for an approval of New Schedule of Rates and Charges for Sewage Service provided to its customers in Richland, Lexington, Fairfield and Orangeburg Counties.
PSC Docket No.: 2004-297-S

Dear Gentlemen:

Please find enclosed and served on you one copy of the Office of Regulatory Staff's Response to Petition for Declaratory Order in the above-referenced matter.

If you have any questions, please feel free to contact me.

Very Truly Yours,


Florence P. Belser
FPB/rmg

Enclosures

cc: Charles L.A. Terreni, Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2004-297-S

SEPTEMBER 7, 2005

IN THE MATTER OF:)

Midlands Utility, Inc.)
_____)

**RESPONSE TO PETITION
FOR DECLARATORY
ORDER**

SC PUBLIC SERVICE
COMMISSION

2005 SEP - 7 PM 2: 24

RECEIVED

On August 30, 2005, Midlands Utility, Inc. ("Midlands") filed a Petition with the Public Service Commission of South Carolina ("Commission") by which Midlands seeks a Declaratory Order holding that Midlands is authorized, under its existing schedule of rates approved by the Commission, to commence charging its collection-only rates to those customers whose wastewater is treated by other treatment providers without further order of the Commission.¹ In response to Midlands' Petition, the Office of Regulatory Staff ("ORS") provides the following information:

1. In Docket No. 2001-380-S, Midlands filed an application with the Commission in which Midlands sought the establishment of a collection-only sewer charge. By Order No. 2002-138 (March 11, 2002), the Commission approved a collection-only sewer charge for Midlands. However, at the time of the issuance of Order No. 2002-138 and the initial approval of the collection-only sewer charge, Midlands did not implement the collection-only sewer charge for any group of customers.

¹ The collection-only rate may also be referred to as the "pass-through" rate. Under this rate, Midlands charges a base charge for collection and then "passes-through" the charges for treatment services. The collection-only rate is only to be used when treatment is provided by entity other than Midlands.

2. At a later date but also in Docket No. 2001-380-S, Midlands filed an application with the Commission in which Midlands sought (1) a modification of a Wholesale Wastewater agreement between Midlands and the Town of Winnsboro and (2) Commission approval to implement the collection-only sewer charge. By Order No. 2002-785 (November 14, 2002), the Commission approved a modification in the treatment rate charged to Midlands by the Town of Winnsboro for wastewater treatment services. Additionally, the Commission granted permission for Midlands to implement the collection-only sewer (service) charge established in Order No. 2002-138. Prior to the approval to implement the collection-only sewer charge granted by Order No. 2002-785, Midlands had not charged the collection-only sewer charge to any of its customers.

3. On or about October 6, 2004, Midlands filed its application requesting approval of a new schedule of rates and charges for sewer services provided to its customers in Richland, Lexington, Fairfield, and Orangeburg Counties. This application was assigned to the instant docket (Docket No. 2004-297-S). The Commission granted an increase in rates and charges for Midlands in Order No. 2005-168 (April 6, 2005). Midlands sought and received increases to its rates for sewer service (collection with treatment provided by Midlands) and for collection-only service (treatment provided by another entity).

4. In this most recent rate case, the application filed by Midlands did not request immediate implementation of the increased collection-only charges for customers not previously approved for the collection-only charge.² Because Midlands did not request immediate implementation of the collection-only charges (and pass-through of

² At the time of the hearing in this rate case, only customers in the Royal Hills Subdivision of Fairfield County where wastewater treatment is provided by the Town of Winnsboro were served and charged by Midlands under the collection-only rate schedule.

treatment charges), the Notice of Filing did not advise those customers who may be charged the collection-only rate that they would be subject to the collection-only charges as well as the pass-through of treatment charges.³ A copy of the Notice of Filing issued by the Commission in conjunction with this rate case is attached to this Response as Exhibit 1. This Notice of Filing was published by Midlands and sent to each customer of Midlands. Customers who may be charged the collection-only rate received no notice that approval of Midlands' request for an increase in rates would result in those customers being moved from the rate schedule for sewer service (collection and treatment) to the collection-only rate schedule which includes the accompanying pass-through of treatment charges.

5. Notice to the public is required of any request to implement new rates, charges, or classifications. See, S.C. Code Ann. § 58-5-240 (Supp. 2004). While notice of the new rates was provided in the Notice of Filing, the change of certain customers' classification, i.e. being moved from one rate schedule to another, was not provided. Other than the customers on the collection-only charge at the time of the hearing, no other customer potentially subject to the collection-only charge received sufficient and adequate notice of the increase in rates for collection-only service. For those customers which may be subject to the collection-only charges, those customers are in effect being moved to another rate schedule or a different classification. S.C. Code Ann. § 58-5-240 (Supp. 2004) and fundamental fairness require that the customers be notified of their change in rate classification and that they will be charged under the collection-only rate schedule with the additional pass-through of treatment charges. Without proper notice to

³ Midlands' customers which could be impacted by the collection-only charge and which ORS asserts did not receive adequate notice of their change in classification of rate schedules are those customers whose wastewater is treated by either the City of Orangeburg, the City of Cayce, or Carolina Water Service, Inc.

the customers that their classification, or schedule of rates under which they are being charged, has changed, those customers are in effect being charged an increase without notice.⁴

6. Because the Notice of Filing did not advise the customers who were potentially subject to the collection-only rates that Midlands was seeking to implement the collection-only (pass-through) rates immediately upon issuance of the Commission's order in this case, those customers were not properly notified of the impact of the requested increase.⁵ Without notice to the customers that they may be affected by the collection-only rate, those customers presently served under the Midlands sewer service (collection and treatment) rate would not have realized that the increase in collection-only rates would apply to them and that they would be subject to paying the increased collection-only rate as well as the pass-through for the treatment services.

7. Due to the lack of notice to the affected customers that the rate case would result in those customers being charged rates under a different rate schedule, ORS requests that the Commission require Midlands to notify those customers prior to implementing the collection-only rates for customers not being served under the collection-only rate schedule at the time of the hearing. The evidence from the hearing in

⁴ Usually in the case of most regulated services, a customer is in the position to request service under a different rate schedule should the customer determine that service may be more economical under a different rate schedule. Customers changing rate schedules at their option are frequently observed in the telecommunications, electric, and gas industries. However, in the case of the collection-only rate schedule for sewer service, the customer does not have the option of requesting service under that schedule or another schedule. It is the sewer utility which determines to obtain treatment services from another entity, and it is the sewer utility which determines, upon approval from the Commission, whether to implement a collection-only schedule or rates.

⁵ At the time of this most recent rate case, the only customers of Midlands which were approved by the Commission to be charged under the collection-only rate schedule were those customers in Fairfield County whose wastewater is treated by the Town of Winnsboro. Midlands has treatment contracts with the City of Orangeburg, the City of Cayce, and Carolina Water Service, Inc. Midlands customers whose wastewater is treated by one of these entities had no notice that they would be subject to the collection-only rate and that their bills would be increased more than the requested rates for sewer service as contained in the Notice of Filing.

the rate case showed that only customers whose wastewater was treated by the Town of Winnsboro were being charged under the collection-only rate schedule. Customers whose wastewater is treated by the City of Orangeburg, the City of Cayce, or Carolina Water Service, Inc. should be provided notice that they will in the future be served and charged rates under the collection-only rate schedule with the treatment charges assessed by the entity providing the treatment services being “passed-through” as a separate line item on the bill.

8. Notice to affected customers is consistent with prior Commission practices. In Order No. 93-402 (May 11, 1993) issued in Docket No. 91-641-W/S (Rate case Application of Carolina Water Service, Inc.), the Commission approved a “pass-through” provision for Carolina Water Service, Inc. With regard to bulk water suppliers and use of the “pass-through” rate, the Commission stated “CWS will be required to notify all affected customers of its intention to convert to a bulk water supplier and the cost per 1,000 gallons of water as agreed to by the Company in its contract. ... The Commission also adopts the same procedure for contracts which CWS enters into for sewer treatment services.” Order No. 93-402, p. 46.

9. Midlands was aware that it could not implement the collection-only rate without specific approval from the Commission. Mr. Keith Parnell, in response to questioning from Commissioner Hamilton stated, “when we came over here to get those collection only charges, it was made clear – the Commission wanted to make sure – made it clear to me that they did not want me to just implement these pass through[s] without the Commission’s approval ...” TR. p. 79, l. 24 – p. 80, l. 3. (Transcript of Hearing, Docket No. 2004-297-S). Further, prior actions by Midlands also support the fact that

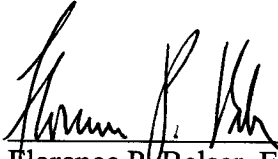
Midlands was aware that Commission approval was required before implementing the collection-only rate. Midlands filed a request seeking Commission approval before implementing the collection-only rate for the customers of the Royal Hills Subdivision in Fairfield County where treatment is provided by the Town of Winnsboro. See, Commission Order No. 2002-785 (November 14, 2002), Docket No. 2001-380-S.

10. In its Petition for Declaratory Order, Midlands advises the Commission that it “is now desirous of charging its customers the collection-only rate and passing through to its customers the rates charged by the respective treatment-only providers on a pro-rata basis without markup as approved by this Commission.” Petition, ¶ 7, p. 3. Midlands further advises that it “has begun the process of charging its customers whose wastewater is treated by other treatment providers and has begun billing these customers the collection-only rate and passing through to these customers the rates charged by the respective treatment-only providers on a pro rata basis without markup.” Petition, ¶ 8, p. 3.

11. In order to provide adequate and sufficient notice to the customers affected and to comply with prior Commission practices, ORS requests that the Commission require Midlands to provide notice to all customers being moved to the collection-only rate schedule prior to charging those customers under the collection-only rate schedule. South Carolina law and fairness require proper notice by the utility of the change in the rate schedule under which the customers are charged, prior to the customers actually being charged under the different rate schedule. Receipt of a bill based on the different rate schedule does not constitute sufficient or adequate notice to the affected customers.

WHEREFORE, ORS respectfully requests of this Commission that:

1. Midlands be required to provide notice to all customers being moved to the collection-only rate schedule prior to actually charging the collection-only rate and pass-through of treatment costs to those customers.
2. In the notice to the customers, Midlands provide an explanation as to the change in rate schedule for those customers, an explanation of the collection-only rate and the pass-through mechanism, and include the amount of the collection-only rate as approved by the Commission and the treatment cost charged by the entity treating the sewerage.
3. Midlands not be allowed to charge the increased collection-only rate and accompanying pass-through rate until proper notice has been provided to all affected customers.
4. For any and all customers to which Midlands has charged the increased collection-only rates and accompanying pass-through rates prior to proper notice, Midlands shall provide credit or refund of those increased rates.
5. For such other relief as this Commission deems just and proper.



Florence P. Belser, Esquire
Wendy B. Cartledge, Esquire
Attorneys for the
SC OFFICE OF REGULATORY STAFF
P.O. Box 11263
Columbia, S.C. 29211
Telephone: 803-737-0877
Facsimile: 803-737-0895

Columbia, South Carolina
September 7, 2005

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
DOCKETING DEPARTMENT

Exhibit 1
Page 1 of 3

NOTICE OF FILING

DOCKET NO. 2004-297-S

Midlands Utility, Inc. ("Midlands") has filed an application with the Public Service Commission of South Carolina requesting approval of a new schedule of rates and charges for sewerage service provided to its customers in Richland, Lexington, Fairfield and Orangeburg Counties, SC. This application is made pursuant to S. C. Code Ann. Sec 58-5-240 (Supp. 2003) and the rules and regulations of the South Carolina Public Service Commission.

The Company has requested an increase in its rates and charges due to increased operating expenses, and anticipates additional increased expenses resulting from Midlands' need for capital improvements and related environmental requirements of the South Carolina Department of Health and Environmental Control (DHEC). Midlands is applying for approval of a two step schedule of rates and charges to be implemented in two stages. The Application states that the first increase required will raise rates to pay for new costs created by construction necessary for capital improvements. A second increase in rates will be required upon completion of all construction.

**THE EXISTING AND PROPOSED RATES AND CHARGES FOR SEWER SERVICE
ARE ATTACHED HERETO.**

A copy of the application is on file in the offices of the Public Service Commission of South Carolina, 101 Executive Center Drive, Columbia, South Carolina 29210; and is available from Scott Elliott, Esquire, or Charles H. Cook, Esquire, Elliott & Elliott, P.A., 721 Olive Street, Columbia, SC 29205.

A public hearing, if scheduled, will be held in Columbia, South Carolina in the offices of the Commission at the above address, for the purpose of receiving testimony and other evidence from all interested parties regarding this Application. The time and date of this hearing will be furnished to all interested parties at a later date.

Any person who wishes to participate in this matter, as a party of record with the right of cross-examination, should file a Petition to Intervene in accordance with the Commission's Rules of Practice and Procedure on or before **December 31, 2004** and indicate the amount of time required for his presentation. *Please refer to Docket No. 2004-297-S.*

Any person who wishes to testify and present evidence at the hearing should notify the Docketing Department in writing, at the address below and Mr. Scott Elliott at the above address, on or before **December 31, 2004** and indicate the amount of time required for his presentation. *Please refer to Docket No. 2004-297-S.*

Any person who wishes to be notified of the hearing, but does not wish to present testimony or be a party of record, may do so by notifying the Docketing Department in writing at the address below on or before **December 31, 2004**. *Please refer to Docket No. 2004-297-S.*

PLEASE TAKE NOTICE: Any person who wishes to have his or her comments considered as part of the official record of this proceeding **MUST** present such comments, in person, to the Commission during the hearing.

Persons seeking information about the Commission's Procedures should contact the Commission at (803) 896-5113.

Public Service Commission of South Carolina
Attn: Docketing Department
Post Office Drawer 11649
Columbia, S. C. 29211

11/16/04

**Schedule of Existing and Proposed
Rates and Charges for
Midlands Utility, Inc.**

	I	II	III
	Existing <u>Rate</u>	Rate During <u>Construction</u>	Rate After <u>Construction</u>
	\$	\$	\$
<u>Schedule of Residential Rates</u>			
A) Customers wastewater treated by Midlands wastewater plants:			
Type of Residence (Monthly Service Charge)			
Permanent Base	26.70	37.90	38.95
Apartments (Per Unit)	26.70	37.90	38.95
Mobile Base	20.30	28.43	29.21
B) Customers wastewater treated by others (pass-thru rate):			
Type of Residence (Monthly Service Charge)			
Permanent Base	14.22	23.03	24.03
Apartments (Per Unit)	14.22	23.03	24.03
Mobile Base	10.81	17.27	18.02

Schedule of Commercial Rates

A) Customers wastewater treated by Midlands wastewater plants:			
Type of Establishment (Monthly Service Charge per SFE)			
Convenience Store	26.70	37.90	38.95
Other	26.70	37.90	38.95
B) Customers wastewater treated by others (pass-thru rate):			
Type of Establishment (Monthly Service Charge per SFE)			
Convenience Store	14.22	23.03	24.03
Other	14.22	23.03	24.03

<u>Tap Fees</u>	<u>Current Rate</u>	<u>Proposed Rate</u>
Residential	\$250.00 per SFE	\$500.00 per SFE
Commercial	\$250.00 per SFE	\$500.00 per SFE